

Appl. No. : 10/056,662

Confirmation No. 9818

Applicant : Daniel J. Benedict et al.

Filed : 01/23/2002

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Examiner : Léon B. Lankford Jr.

Docket No. :

Customer No. : 26357

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

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42,679

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REQUEST FOR RECONSIDERATION
OF IMPOSITION OF A TIME EXTENSION FEE

Applicant respectfully requests reconsideration of the Examiner's decision to impose a
time extension fee for the following reasons:

The Final Office action was mailed on 06/20/05.

Applicant requested that a telephone interview be held on 08/19/20 in a paper faxed to the Office on 08/10/05. Having an interview on that date would have allowed the applicant to reply within two months of the mailing date.

Applicant received a fax confirmation of receipt of the interview request by the Office, but the Examiner could not be reached by the applicant after repeated attempts. On 09/02/05, the interview request was resubmitted with a proposed interview date of 09/07/05. The Examiner then proposed an interview date of 09/12/05.

During the interview on 09/12/05, the Examiner and the applicant reached an agreement on the wording of the claims. Cancellation of the apparatus claims was not discussed. The applicant filed an amendment on 09/16/05 that constituted a complete reply to the Office action. The Examiner asked that the amendment be filed as soon as possible, so that he could review it while the case was fresh in his mind.

On 12/08/05, the Examiner initiated an interview at which time he requested authorization to cancel the non-elected claims. The applicant authorized the cancellation of those claims. The Examiner also stated that he would investigate whether a time extension payment was necessary and that he would charge it to the deposit account of the undersigned if necessary.

MPEP 706.07(f) provides that:

“(F) Where a complete first reply to a final Office action has been filed within 2 months of the final Office action, an examiner's amendment to place the application in condition for allowance may be made without the payment of extension fees even if the examiner's amendment is made more than 3 months from the date of the final Office action. Note that an examiner's amendment may not be made more than 6 months from the date of the final Office action, as the application would be abandoned at that point by operation of law.

(G) Where a complete first reply to a final Office action has not been filed within 2 months of the final Office action, applicant's authorization to make an amendment to place the application in condition for allowance must be made either within the 3 month shortened statutory period or within an extended period for reply that has been petitioned and paid for by applicant pursuant to 37 CFR 1.136(a). However, an examiner's amendment correcting only formal matters which are identified for the first time after a reply is made to a final Office action would not require any extension fee, since the reply to the final Office action put the application in condition for allowance except for the correction of formal matters, the correction of which had not yet been required by the examiner.

(H) An extension of time under 37 CFR 1.136(a) requires a petition for an extension and the appropriate fee provided for in 37 CFR 1.17. Where an extension of time is necessary to place an application in condition for allowance (e.g., when an examiner's amendment is

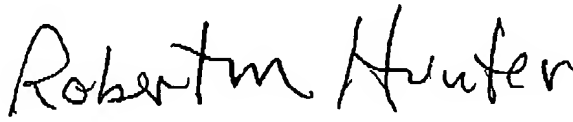
necessary after the shortened statutory period for reply has expired), applicant may file the required petition and fee or give authorization to the examiner to make the petition of record and charge a specified fee to a deposit account.

(L) Formal matters which are identified for the first time after a reply is made to a final Office action and which require action by applicant to correct may be required in an *Ex parte Quayle* action if the application is otherwise in condition for allowance. No extension fees would be required since the reply puts the application in condition for allowance except for the correction of formal matters - the correction of which had not yet been required by the examiner."

Because the applicant could have responded within two months but for a delay caused by the Office, because the applicant did not cause the delay between 09/16/05 and 12/08/05 and because the Examiner's Amendment consisted solely of canceling claims 76-83, an act that had not yet been required by the Examiner, it is not fair to charge the applicant a time extension fee. In accordance with the MPEP 706.07(f), applicant requests that no time extension fee be charged and that the patent term adjustment be corrected.

Respectfully submitted,

ROBERT M. HUNTER PLLC

By:  12/20/05

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